

Congress of the United States

Washington, DC 20515

January 24, 2003

Honorable Michael K. Powell, Chairman
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell and Commissioners:

We, the undersigned Members of Congress are increasingly concerned that the Federal Communications Commission ("FCC") is considering changes to its rules that could cause great harm to hundreds of small businesses and millions of American consumers. In our view, this result would undermine Congress' intent in passing the Telecommunications Act of 1996 (the "1996 Act"). Rather than re-writing the 1996 Act by administrative fiat, the FCC needs to enforce the Act as Congress intended, to ensure that competitors have access to the telephone network.

Your testimony before the Senate Commerce, Science, and Transportation Committee on January 14, 2003 further confirmed our fears. Some of the proposed changes would bar competitive local telecommunications companies and independent Internet companies from leasing access to the networks of the Bell Companies. As a result, many of these entrepreneurial companies could be put out of business, and the rates consumers pay for local telephone and broadband service could increase. Despite the claims of some, the recent decision by the D.C. Court of Appeals decision still does not mandate that the FCC unilaterally dismantle the open network provisions of the 1996 Act.

At a time when the Congress and the President are proposing ways to stimulate the economy, the FCC's proposals would appear to have the opposite effect. These proposals may delay our economic recovery by forcing consumers to pay more for their local telephone service and raising the costs of many small businesses.

Our concerns are based on what we have heard from consumer groups, competitive local phone companies, long distance companies, Internet service providers ("ISP"), state regulators and small businesses. What we've heard is alarming:

- Consumer advocates are concerned that the proposals will lead to significantly higher rates for local telephone and broadband services. Competitive providers charge consumers rates generally 10% to 50% lower than the rates charged by the Bell Companies. According to one estimate, consumers save \$9 billion per year from local

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telephone competition. If competitors are no longer available, consumers will have no choice but to take service from the Bell Companies, which will have no incentive to offer lower rates.

- Competitive local phone companies, most of whom qualify as small businesses, are concerned that they could be forced to curtail their services or even be forced out of business by these proposals. Under the current rules, competitive local exchange carriers (CLECs) are allowed to lease portions of the Bell Companies' networks at rates that provide the Bell Companies with a "reasonable profit." If the FCC eliminates or curtails their ability to lease these components, then the competitors will have no way to serve their customers. Since 1996, these entrepreneurial companies have raised over \$100 billion in capital and built broadband local networks. They now provide service to over 21 million access lines and serve 11% of the local market (according to the FCC's own data). Withdrawing the CLECs' access to the components of the Bell Company networks would pull out the rug from under these small businesses and leave billions of dollars in stranded investment.
- Long distance companies are concerned that these proposals will give the Bell Companies an enormous advantage in providing long distance service. The Bell Companies have been approved to provide long distance service in 35 states, based on their promise to open up the local market to competition. The FCC proposals could shut down the local market to competition, leaving the Bell Companies as the only ones able to provide a bundle of local and long distance service. Because consumers increasingly prefer to buy local and long-distance service from the same provider, carriers unable to be the single provider of all services will not survive, and consumers will suffer the loss of a choice in long-distance service provider.
- Independent ISPs are concerned that the FCC's proposals will prevent them from providing broadband services. Under the current rules, the Bell Companies cannot discriminate between their own ISPs and independent ISPs -- the Bells must give independent ISPs the same quality of access to the network at the same price that they give to themselves. One of the FCC's proposals would allow the Bell Companies to discriminate in favor of their own ISP and deny access to the independent ISPs for broadband services. This could put thousands of independent ISPs out of business and give the Bell Companies an enormous advantage in the broadband marketplace.

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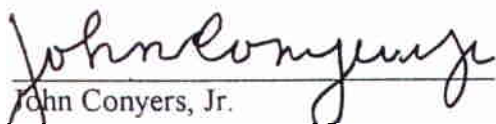
- State regulators are concerned that the FCC is proposing to preempt state regulators' authority to ensure that their consumers have affordable local phone rates. State commissions have utilized the UNE-P framework as the basis for assessing whether the Bell Companies have opened their networks sufficiently to competition, to qualify for entry into the long distance market. Many states are concerned that a change in the rules would undermine their recommendations for the approval of long distance service and detrimentally limit their ability to ensure continued competition for local services. The FCC's proposal to adopt nationwide rules would not give the states the discretion they need to tailor rules to their local markets, thereby unnecessarily expanding the Federal Government's role over local telecommunication matters.
- Thousands of small businesses are concerned that they will lose the opportunity to obtain competitive voice and data service if the Commission's existing UNE-P and network access rules are eliminated. Absent current facilities-based competitors for voice and Internet traffic, no effective competitive alternative will be available to these small business consumers for telecommunications services. The FCC must assess this impact under the Regulatory Flexibility Act and examine alternatives that will enable small business customers to obtain competitive service. Finally, should the Commission adopt any standards based on the size of the small business customer, it must have those standards approved by the Administrator of the Small Business Administration.

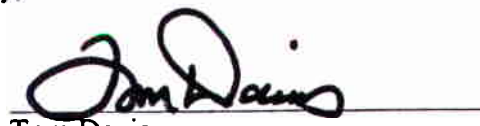
In addition, it has come to our attention that the Commission may be considering proposals to limit the access of competitive broadband providers to essential last mile monopoly facilities. We have grave concerns about the effects of such proposals on competition in the residential DSL market.

For all these reasons, we urge the FCC not to make any final decision in the UNE Triennial Review or Wireline Broadband proceedings until Congress has a sufficient opportunity to consider the impact of the pending proposals on consumers and competition. To assist us in this regard, we request a written response by January 31, 2003 to explain how you propose to address the concerns of consumers, CLECs, long distance companies, independent ISPs, state regulators and small businesses described above.

Thank you for your consideration of these important matters.

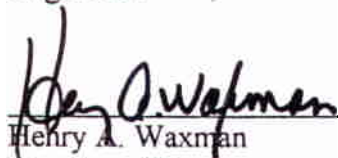
Sincerely,


John Conyers, Jr.
Member of Congress

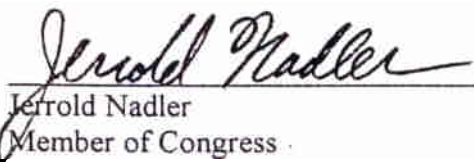

Tom Davis
Member of Congress

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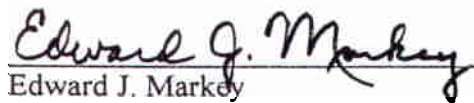
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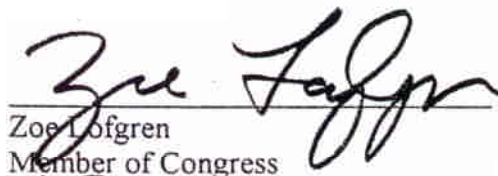
Henry A. Waxman
Member of Congress



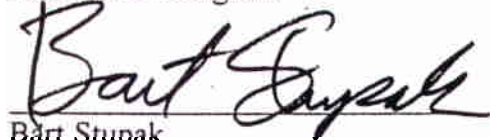
Jerrold Nadler
Member of Congress



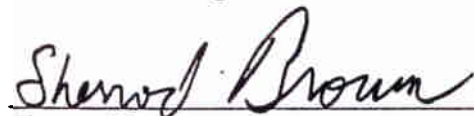
Edward J. Markey
Member of Congress



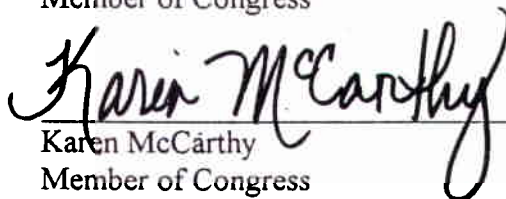
Zoe Lofgren
Member of Congress



Bart Stupak
Member of Congress



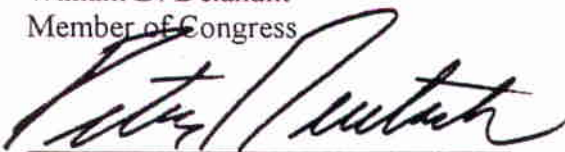
Sherrod Brown
Member of Congress



Karen McCarthy
Member of Congress



William D. Delahunt
Member of Congress



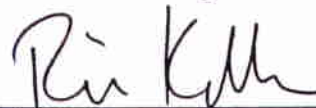
Peter Deutsch
Member of Congress



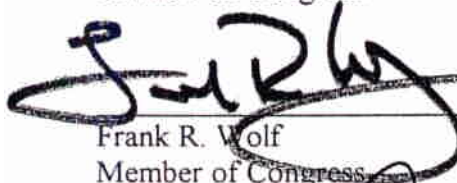
Chris Cannon
Member of Congress



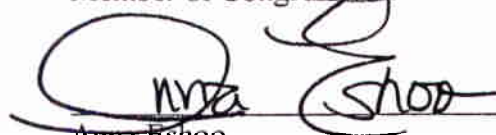
Tom Osborne
Member of Congress



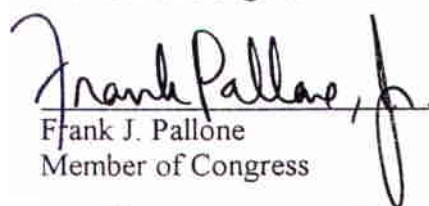
Ric Keller
Member of Congress



Frank R. Wolf
Member of Congress



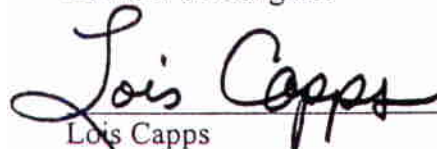
Anna Eshoo
Member of Congress



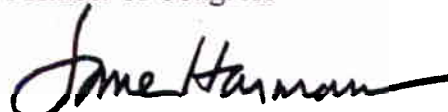
Frank J. Pallone
Member of Congress



Diana DeGette
Member of Congress



Lois Capps
Member of Congress



Jane Harman
Member of Congress